

Official Journal No. 70, dated May 20, 2014

This law is partly aligned with Directive 2011/7 / EU, the European Parliament and Council of 16 February 2011, "On the fight against late payment in commercial transactions"; Celexa: 32011L000, Official Journal of the European Union, Series L, no. 48, dated 23.02.2011, p. 1-10.

LAW

Nr. 48/2014

ON LATE PAYMENTS IN COMMERCIAL AND CONTRACTUAL OBLIGATIONS

Pursuant to Articles 78 and 83, paragraph 1, of the Constitution, with the proposal of the Council of Ministers,

ASSEMBLY OF THE REPUBLIC OF ALBANIA

Decided:

Article 1

The purpose of the law

The purpose of this law is to define the rules for the time and manner of calculation of legal interest on late payments in the case of supply of goods or services by commercial enterprises versus other commercial enterprises and public authorities, in order to ensure the functioning Proper internal market by promoting the competitiveness of commercial enterprises and, in particular, small and medium.

Article 2

Scope of the law

This law applies to all payments made as a refund for commercial legal actions. Not subject to regulations of this law obligations or payments:

- a) which are the subject of bankruptcy proceedings opened against the debtor, including the procedure for restructuring the debt;
- b) arising from contracts with customers;
- c) relating to interest or other payments made for the securities;
- d) associated with the extra damage compensation, including payment of damages by the insurance companies.

Article 3

Definitions

In this law, the following terms have the following meanings:

1. "Commercial legal action" is the contract or any other legal action, conducted between commercial enterprises or between businesses, on the one hand, and public authorities, in turn, which lead to delivery of goods or provision of services against a refund.
2. "Public authority" means any contracting authority state, as general government units, including units of the central government, local and special funds.
3. "Commercial venture" means any legal entity established by Law no. 9901, dated 14.4.2008, "For traders and trading companies", as amended, with the exception of a public authority, acting within the scope of its independent economic or professional.

4. "Late payment" is a payment that is not made within the time specified by contract or by law, by commercial enterprise and the public authority when the conditions as stipulated in Article 4 of this law.
5. "Late payment of bills" is the payment that is not made within the time specified by contract or by law, when the conditions as stipulated in Article 4 of this law, but when unable to lack of liquidity in the single treasury account after the date of registration in the government's financial information system.
6. "Treasury System", this term has the same meaning as that provided for in Law no. 9936, dated 26.6.2008, "On the management of the budgetary system in the Republic of Albania", as amended.
7. "Legal default interest for late payment" is the default interest prescribed by law for late payment, interest rate equal to the interest rate for Lek or interest rate for the euro zone, or interest rate foreign currency and at least eight percentage points calculated according to Article 5 of this law.
8. "Repurchase agreement (REPO)" means the agreement, through which the Bank of Albania sells securities, taking to purchase it according to terms agreed in advance with a bank or foreign bank branches, temporary in order to reduce liquidity in the banking system.
9. "Reverse repurchase agreement (reverse REPO)" means the agreement, through which the Bank of Albania buys securities, assuming sell them according to terms agreed in advance with a bank or branch foreign bank in order to increase temporary liquidity in the banking system.
10. "Base interest rate for Lek" is the interest rate on repurchase agreements and reverse repurchase (repo and reverse repo), approved by the decision of the Supervisory Council of the Bank of Albania. Official Journal No. 70, dated May 20, 2014
11. "Base interest rate for the euro area" is the interest rate of the main refinancing operations, approved by the decision of the Governing Council of the European Central Bank.
12. "Base interest rate in foreign currency" is the interest rate of the main refinancing operations, approved by the competent authorities of the central bank, which issues the currency in which payment is made.
13. "Amount payable" is the principal should have been paid within the legal or contractual payment, including taxes, duties, tariffs or duties applicable, set forth in the invoice or equivalent request for payment.
14. "Executive Order" is an order to execute securities execution, under Article 511 of the Code of Civil Procedure.

Article 4

Legal actions between commercial enterprises and public authorities

In commercial legal actions where the debtor is a commercial enterprise or a public authority, the creditor is entitled to from the day after the deadline for payment, overdue benefit without the need to send information about a the debtor's delay in cases where:

- a) The creditor has fulfilled its obligations under the contract and the law and the debtor has not objected to the obligation;
- b) The creditor has not received the amount to be paid within the time, except when the delay is not responsible for the debtor.

Article 5

Calculation of interest-delay

1. The base interest rate lek applicable to the calculation of interest-delay is:

For the first half of the year, the interest rate on repurchase agreements and reverse repurchase (repo and reverse repo), approved by the decision of the Supervisory Council of the Bank of Albania at the last meeting of the previous year, adding eight percentage points, and for the second half, the rate adopted by the decision of the Supervisory Council of the Bank of Albania at the last meeting before 1 July of the current year, adding eight points.

2. The base interest rate for the euro applicable for the calculation of interest-delay, is:

For the first half of the year, the interest rate main refinancing operations, approved by the decision of the Governing Council of the ECB at the last meeting of the previous year, plus eight percentage points, and for the second half, according to rate approved by a Council decision

European Central Bank Governing last meeting before 1 July of the current year adding eight points.

3. The base interest rate for other currencies, applicable to the calculation of interest-delay is ALL reckoning interest rate, taking as course ALL of liability calculation, the course of the day that required the payment of legal delay interests.

Article 6 Time

When the contract or any other legal provisions can not be determined a time or date for payment, interest-delay calculation starts from the date on which the debtor does not execute its obligation, required by the creditor, the provisions of Article 463 Civil Code. Creditor to whom the debtor has not objected to the supply of goods or services, is entitled to receive overdue, starting from the day after the due date, specified in the contract.

In those cases where the debtor has refused to take delivery of the goods or services, because of claims that it has on them, the deadlines provided in this Article shall be calculated from the date of agreeing between creditor and debtor for the receipt of goods, work or services performed by the creditor.

In cases where payment term is not defined in the contract after the expiry of the execution of the obligation of the debtor, under Article 463 of the Civil Code, the creditor is entitled to receive overdue, starting from the end of the deadlines as follows:

- a) 30 calendar days after the date of receipt by the debtor of the invoice or an equivalent payment demand;
- b) 30 calendar days after the date of receipt of goods or services, where there is a clear date of receipt of invoice or the equivalent kërkesëpagesës;
- c) when the debtor receives the invoice or the equivalent kërkesëpagesën before delivery of goods or services, 30 calendar days after the date of receipt of goods or services;
- d) when the law or the contract provides for a procedure of delivery or commissioning, through which verified compliance with the contract goods or services and if the debtor receives the invoice or the equivalent kërkesëpagesën before or on the date of receipt or commissioning in words, 30 days after that date.

The deadline specified in the letter "a" of this Article may be extended no more than 60 calendar days. Official Journal No. 70, dated May 20, 2014

Contractual deadlines for payments may not be longer than 60 days from date of letter "a" of this article. In those cases where the contract or the agreement of the parties is assigned a different period, this period is considered valid, unless it affects and puts the creditor discriminatory position.

Article 7

The deadline for public authorities

In commercial legal actions in which the debtor is a public authority, after the expiry of the execution of the obligation of the debtor, under Article 463 of the Civil Code, and:

- a) the creditor has fulfilled all its obligations under the law and the contract;
- b) the creditor has not been paid, except when the delay has not been the fault of the debtor;
- c) when the contract or any other legal provisions can not be determined any time a date for payment, payment term must not be longer than:
 - i) 30 calendar days after the date of receipt by the debtor of the invoice or the equivalent of a k rkes page;e;
 - ii) 30 calendar days after the date of receipt of goods or services, where there is a clear date of receipt of invoice or the equivalent k rkes pages s;
 - iii) 30 calendar days after the date of receipt of goods or services, where the debtor receives the invoice or the equivalent k rkes pages n before delivery of goods or services;
 - iv) when the law or the contract provides for a procedure of delivery or commissioning, through which verified compliance with the contract goods or services, and if the debtor receives the invoice or the equivalent k rkes pages n before or on the date of receipt or commissioning in question, 30 days after that date.

In those cases where between the creditor and the debtor has a specific date for submission of the bill, the deadlines for the payment of default interest shall be calculated from the day following the date specified in the agreement.

The deadline specified in the letter "a" of this Article may be extended no more than 60 calendar days, except when the contract or agreement is agreed for another period.

In those cases where a public authority has refused to take delivery of the goods or services, because of claims that it has on them, the deadlines provided in this Article shall be calculated from the date of agreeing between creditor and debtor for the receipt of goods , work or services performed by the creditor.

The deadline specified in the first paragraph of this Article, shall entitle the creditor to seek to obtain the overdue after 60 calendar days in total, including 30 calendar days of delay by the Treasury, in addition to 30 days delayed payment due to public authority.

Article 8

Extension of deadlines for public authorities

The terms specified in Section 7 of this law does not apply in terms of delayed payments to commercial legal actions committed by public authorities to provide services in the field of health care. In these cases deadlines can not be longer than one calendar year from the date when its right to seek payment for the sale of goods or provision of services.

Article 9

Payment by installments

For payments which, under the agreement of the parties, is scheduled to be conducted in different time periods, if any of the installments is not paid by the date on which it was agreed, default interest and compensation provided for in this law are calculated on the basis of values for installment, which has passed the payment deadline.

Article 10
Timing of receipt of goods

In those cases where, by contract or agreement of the parties, it is anticipated that the goods will be taken according to a filing procedure or where should become their commissioning, the time of receipt or the roadworthiness of goods can not be more longer than 30 days. This period begins to run from the day following the arrival of the goods at the destination specified by the buyer.

If the contract or agreement of the parties set a different period, different from the one provided in the first paragraph of this article, the deadline will be considered valid, provided that, given the nature of the goods or trade practices, the not be detrimental to the interests of the creditor and not the latter put in a discriminatory position.

Article 11
The compensation costs for loan recovery

The creditor has the right to demand payment from the debtor not only in his favor to delay interests of failing to pay within, but also the payment of all expenses incurred by him to repay the credit, these expenses incurred due to late payment unless the debtor is not at fault for the delay.

Projected expenditures in the first paragraph of this article counted as additional costs to the amount that has arisen due to late payment and include any expense of the creditor to prove that he committed against lawyers, other legal expenses incurred to make possible collection of payment, and any expenses paid by him to put in execution the payment of the amount due.

Article 12
Payment of expenses

In case of delayed payment, the debtor is obliged to pay in favor of the creditor, except expenses provided for in Article 11 of this Law, in damages in the amount of 5,000 (five thousand) ALL. This amount is payable immediately, without the need of performing any notice by the creditor for its payment.

Article 13
Contractual terms

Any agreement that precludes the parties from the obligation to pay interest on late payment cases, is invalid.

Are unfair and do not create legal effects those contractual conditions regarding the terms, conditions or other rates for the calculation of default interest, and for paying the costs of restoring credit, pursuant to article 11 of this law, as long as they bring a disproportionate damage to the interests of the creditor and the latter put in a discriminatory position.

For a finding of an unfair condition, under the preceding paragraph, which aggravates the situation of the creditor, should be taken into account all the circumstances of the case, including:

- a) any substantial deviation from good commercial practice, which contradicts the principles of confidentiality and impartiality;
- b) the nature of the good or service, which is supplied to the debtor;
- c) whether there are objective reasons that brought about the postponement of the terms of the contract, according to the provisions of Articles 6 and 7 of this law; or

d) whether there are objective reasons to bring consequently avoiding the payment provided for in Article 12 of this Law.

Article 14

The consequences of the invalidity of the contractual conditions

If a contractor is in an invalid condition, under Article 13 of this Law, the creditor has the right to seek compensation for damage resulting from the application of these conditions.

If the parties have paid each other payments calculated beyond the norms specified in the law, a party which has paid, has the right to an appeal of enrichment without cause, and the search for the damage award ceases.

Article 15

Commercial ventures obligations before the entry into force of the law

The provisions of this law shall not apply to monetary obligations relating to supplies made for goods and services between commercial enterprises born before the entry into force of this law, but were not met then yet and have not started procedures for executing them.

For the obligations contained in the first paragraph of this article, for which there is a court decision, the creditor has no right to require payment of default interest and other payments related to the recovery of payment, under the provisions of this law.

Article 16

Executive Title

1. Monetary obligations, legal actions arising from trade, which are not paid within the relevant payment under this law, unless otherwise provided for by Article 485 of the Civil Code, constitute an executive title and is executed by the bailiff, regardless of value, when:

- a) the creditor has delivered the goods or performed the services under the contract and the law; and
- b) the debtor has not objected to the obligation.

2. In these cases, along with kamat vonesat liability and compensation for expenses for the return of the loan can be made compulsory execution in accordance with the provisions of the Code of Civil Procedure.

Article 17

Obligations of public authorities before the entry into force of the law

For the obligations of public authorities against businesses, born and executed before the entry into force of this law does not apply the provisions of this law. There may be requested implementation of the provisions of this law in cases of execution of obligations, after the entry into force of this law, the public authorities and born before the entry into force of this law.

Article 18

Entry into force

This law enters into force 15 days after its publication in the Official Journal.

Approved on 04/24/2014

Promulgated by Decree no. 8568, dated 16.05.2014 of the President of the Republic of Albania, Bujar Nishani.